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CableState

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Massachusetts Cable Television Commission

Summer 1989

Rate Regulation Rumblings

by John D. Patrone,
Assistant General Counsel

Nearly three years have passed since the federal rate deregulation provision of the 1984 Cable Act went into effect. In that time, cable operators have raised rates at a swift pace. Indeed, the U.S. Department of Labor recently reported that rates for cable service have increased more than any other commodity in the consumer price index, much to the chagrin of subscribers and municipal officials.

According to the Labor Department, the consumer price index rose 4% from March 1988 through March 1989. The average cable television subscriber, however, paid 13% more for cable service over the same period, nine points higher than the inflation rate!

Interestingly, those services which cable operators often point to as their direct competitors — movie and theatre tickets, concerts and VCR tape rentals have increased at a much slower pace. In January, 1989, while cable rates increased 2.1% — a rate of 25.2% per year — the cost of other entertainment services rose only 1.2% during a month.

This information naturally raises questions about whether cable operators actually face competition in most areas where they are the sole licensee. Public officials are becoming concerned about the monopoly power exerted by cable operators. Senator Howard Metzenbaum of Ohio, who has long been concerned about possible antitrust problems in the cable industry, recently held a second hearing on the topic. During the hearing, he commented that "[c]able franchises have developed into nearly perpetual, exclusive monopolies beyond the regulatory control of local governments. . . . The black hole of public policy that results is a monopolist's dream and a consumer's nightmare."

Senator Metzenbaum believes that nightmare for consumers is quite real. He stated that consumers have paid 32% more in cable television subscriber fees since rate deregulation became effective in 1986.

Stripped of their right to control rates, however, municipal officials have begun to fight back. At its national meeting held this year in Boston, the National League of Cities issued a statement calling for rate regulation. NLC's communications policy states that "fran-

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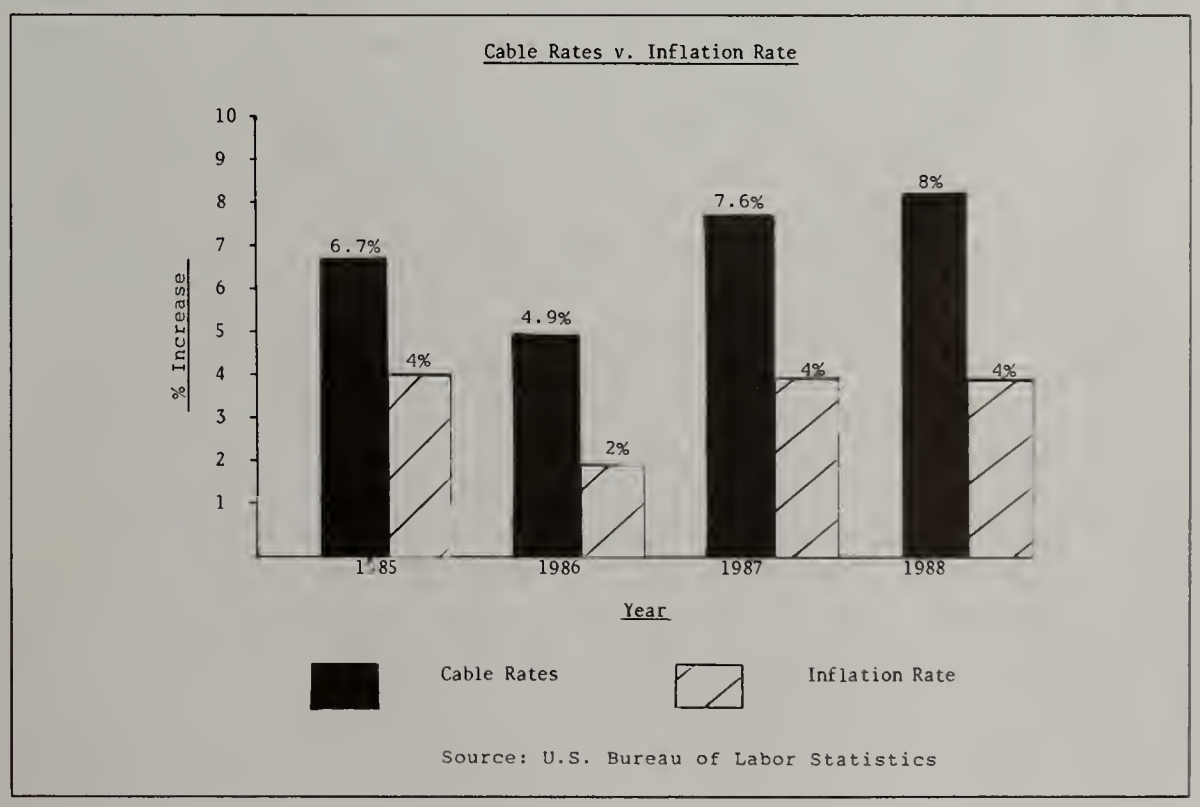

Commissioner's Corner

This issue of *CableState* once again reflects the Commission's continuing commitment to protect the consumer rights of the citizens of the Commonwealth and represent the interests of those citizens in Washington, DC before the FCC. The Commission continues to press cable television operators to improve their service to consumers, while also enforcing its licensing regulations. At the same time, the Commission has taken positions on several important national cable issues which may greatly affect the service provided to consumers.

CableState's lead article discusses a growing concern among local officials and consumers about the dramatic increase in cable television rates. The article reports that cable television rates have outpaced inflation. The article also discusses how municipal officials across the country are beginning to question the wisdom of rate deregulation. This is especially apparent today, when cable companies are bought and sold at a rapid pace, without regard to the effects such ownership changes have on the local system's financial viability. As cable operators frequently point out to municipal officials who want more services from the cable system, the cost of these services will be passed directly onto the consumer. If this is true, it follows that the consumer also must surely be paying for the accumulation of debt which occurs after a system is sold.

The frustration of municipal officials was also evident in another area. During the 1988-89 state legislative session, the Commission filed H.39, a bill which would require cable companies to report their revenues and expenses to each community in which the companies do business. In letters and telephone calls to the Commission, scores of municipal officials expressed their concern about the lack of accountability of cable operators to municipalities. The concerns went further, however. Municipal officials described the difficulty in overseeing a cable television franchise in their community without having a detailed understanding of a cable system's ongoing financial viability.

Meanwhile, cable television service continues to expand into more rural areas. In the last year, as the article on page 11 explains, many small communities received applications from cable companies hoping to do business in their towns. Indeed, more than ever, it seems likely that nearly all of the state's communities will have cable television service by the mid-nineties. The Commission continues to work with municipal officials and cable operators to ensure that the licensing process in these areas flows smoothly.

For the second year in a row, I am pleased to report that the Commission has participated in a major FCC rulemaking. In December, the Commission and the Executive Office of Consumer Affairs & Business Regulation filed joint comments in the FCC's telco-cable cross ownership inquiry. To preserve competition, the Commission urged the FCC to proceed slowly in deciding whether to allow telephone companies to get into the cable television business. This issue's CenterPiece examines the telco-cable cross ownership proposition in the larger context of business growth and technological development. A companion article examines fiber optics, which is already making its appearance throughout the state.

As the 360 participants in last year's Commission-sponsored Community Television Contest will attest, the programming on local cable systems is much more than a combination of broadcast stations and cable network satellite services. Local programming, whether produced by the cable operator or by members of community groups, remains an integral part of the Commission's goal of fostering community participation in the cable system. To that end, the Commission will again present awards to outstanding producers of local programming this year. **(Continued on page 8)**

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Summer 1989

CableState is a publication of the Massachusetts Cable Television Commission, an agency of the Executive Office of Consumer Affairs and Business Regulation.

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Access Advice: Establishing A Corporation

by Penelope Wells, Executive Director

More communities are negotiating renewal agreements which reflect an increasing sophistication about cable and its potential uses. During renewal, many municipalities negotiate enhanced public access commitments. In Massachusetts, where state law has limited the amount of money payable to the municipality's general fund, municipal officials may work harder to channel operator revenues (up to 5% of the operator's gross revenues) to non-profit access corporations.

In Massachusetts, 49 communities have access organizations which receive funding from cable operators. The amounts dedicated annually vary from small lump sum payments to a full 5% of gross revenues (or, more accurately, the difference between 5% and $1.30 per subscriber, the amount required to be paid to state and municipal general funds under M.G.L. ch.166A, §9).

Access operations are accorded special status under the Cable Act. In the legislative history of the Act, Congress found that access serves important public purposes: "A requirement of reasonable third-party access to cable systems will mean a wide diversity of information sources for the public — the fundamental goal of the First Amendment . . . " The Act specifically allows franchising authorities to request and enforce requirements for access channels, facilities and funding.

The Commission has broad statutory powers to oversee cable television licensing and operations in the state, including the payment of access funds specified in licenses. Questions have arisen in the past about the degree of public accountability of access corporations. Although access corporations are independent from the direct control of the cable operators and municipal governments, these corporations serve the public in many ways. Access commitments comprise part of the consideration given for the license itself, and frequently are enforceable under the license, even though municipal governments do not, and should not, exercise direct control over their operation.

The question of whether an access corporation is a public agency raises several important legal issues. Government control of programming over public access channels triggers serious First Amendment concerns, since the Constitution prohibits government interference with free speech. Access corporations, if deemed public agencies, may also be subject to many statutes that apply to government agencies, including the public records law, the conflicts of interest law, and the open meeting law.

Over the past year, both the Cable Television Commission and the state Ethics Commission have issued advisory opinions concerning the status of access corporations. In an important recent decision, the Ethics Commission held that because a particular access corporation was not a public agency, the state's conflict of interest law, M.G.L. ch.268A, did not apply. The Ethics Commission based its decision by reviewing four factors, including the means by which the entity was created, its performance of an essential governmental function, whether the entity receives and/or expends public funds, and the extent of control and supervision exercised by government officials or agencies over the entity.

In another case, the Cable Television Commission issued an opinion — to which the Department of Revenue agreed — that payments to a non-profit corporation did not violate the state constitution or any state law. The Commission strongly encourages municipal officials and access corporations to prepare documents and to take appropriate measures to assure accountability and avoid legal complications later.

Accordingly, when establishing and operating a non-profit public access corporation, municipal officials and access corporation directors should take the following steps:

- Identify in the license an organization separate from the municipal government to receive the access payments from the operator.
- Insulate the board of directors or other governing body of the access organization from the municipality's control. Set criteria for representation on the board and develop a method for replacing members independent from the mayor or board of selectmen, even if the issuing authority appoints the first board.
- Draft clear and detailed articles of organization and by-laws concerning the purposes and guidelines for operation of the entity, limiting editorial control by the board and municipal government.
- Require that the access organization and by-laws concerning the purposes and guidelines for operation of the entity, limiting editorial control by the board and municipal government.

(Continued on page 10)

Legislative Update

The following is a summary of the status and chief sponsor of certain cable bills filed this year. Except as noted, these bills have been considered by the Joint Committee on Government Regulations of the state legislature, chaired by Representative William F. Galvin and Senator Thomas C. Norton.

Disclosure of Income Statements

H.39 (Executive Office of Consumer Affairs and Business Regulation)

H.39 would require cable operators to disclose statements of revenues and expenses to licensing authorities and the public. By providing municipal officials and the general public with access to cable operator financial information, the bill would promote operator accountability and informed regulation and oversight. Filed at the request of the Commission, H.39 has become the legislative priority of the Commission and municipal officials across the state.

License Renewal Period

S.443 (Senator Thomas C. Norton)

This bill would lengthen the maximum renewal term from 10 to 15 years. The Commission again opposes the bill this year because it would make renewal less frequent, thereby reducing municipal opportunities to effect changes in the license at a time when technical and legal issues continue to change rapidly. The Committee reported S.443 favorably to the Senate where it is still being considered at press time.

Franchise Fees

H.2752 (Governor's Office)

As part of the Governor's Supplemental Budget, this bill would raise municipal license fees from 50 cents to $2.00 per subscriber, and state fees from 80 cents to $3.00 per subscriber. The bill was still being debated by the full legislature at press time.

Regulatory Affairs

Rulemakings

Billing and Termination and More —The Commission has initiated a formal rulemaking affecting many consumer protection and cable licensing issues. The proposed rules, highlighted below, are available from the Commission. *In the Matter of Amendment of Billing and Termination of Service, Security Deposit and Miscellaneous Regulations,* Docket R-19 (March 31, 1989).

Cable Equipment Notification — The equipment disclosure rule would require operators to give consumers a notice describing how various video components function together. The notice would describe how equipment provided by the operators — such as converters and remote controls — affects equipment commonly used by consumers, such as VCR's and so-called cable-ready TV sets.

Automatic Rebates for Service Interruptions — Some cable operators now provide rebates for service outages only if requested by subscribers. The new rule would reaffirm the Commission's policy requiring operators to automatically grant a credit when service is interrupted for 24 or more consecutive hours, the operator is aware of the outage and the subscriber did not cause it. The rule also requires credit for loss of a premium service.

Logging of Complaints — A proposed rule would clarify the requirement that cable operators report all complaints — verbal and written — to the licensing authority and to the Commission on their quarterly Form 500 complaint forms. In a related action, the Commission is preparing a notice to all cable operators informing them that they may not limit reported complaints to those handled by a supervisor.

Other Changes — The rulemaking proposes codification of various Commission precedents on applicant ownership changes, licensing of limited partnerships, the sale of unconstructed systems and several procedural requirements during license renewal, including the requirement of a public hearing.

Adjudications

Springfield (CATV Docket NA-3) — An operator's failure to file amendment materials with the Springfield city clerk was harmful error warranting the nullification of a license amendment since the filing requirements protect the public's opportunity to participate in the amendment process.

Belmont (CATV Docket A-65) — Rejecting a claim of prejudgment, the Commission found that the alleged bias of a cable advisory committee member should not be imputed to the Board of Selectmen. The decision also rejected claims that the winning applicant's license application did not disclose material information and that the applicant improperly amended its application.

FCC Filings

Rate Regulation — The Commission again filed comments with the FCC, arguing that the rate deregulation rules are far too lax and that rate deregulation should be allowed only where meaningful competition to cable exists.

In a related matter, the Commission has directed several operators to report whether their communities lack three over-the-air signals and therefore are eligible for rate regulation under the FCC's three-signal rate deregulation test. Two operators acknowledged a lack of adequate data and are conducting signal tests.

Telco-Cable Cross Ownership — In a joint filing with the Executive Office of Consumer Affairs and Business Regulation, the Commission argued that the FCC's proposal to permit telephone company entry into the cable television industry could reduce competition, and result in higher rates, if telcos were allowed to buy out existing cable systems without restrictions.

Specifically, the Commission made four main proposals. First, the Commission stated that telcos should not be allowed to produce their own programming and should be limited to transporting the programming of others. Second, telcos should ideally not be allowed to buy out existing cable franchises. Third, if the FCC should allow telcos to buy existing cable franchises, telcos should be restricted

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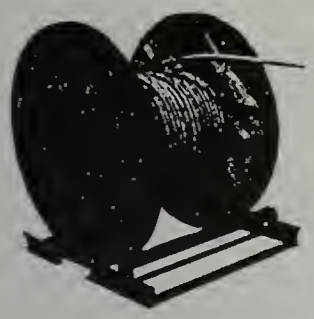
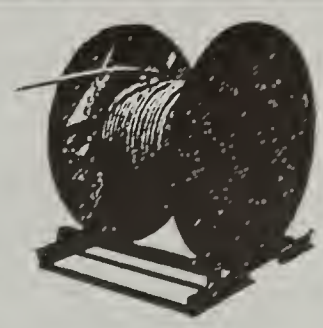


WireLines

The Cable Information X-Change

Cable TV Commission Publications



New Publications:

The 1989 edition of the CIF (Cable Interpretations File) Index is now available. This new edition contains interpretations of correspondence through December 31, 1988. $10.00.

Existing Publications:

Consumer Rights Pamphlet

This pamphlet discusses consumer rights in the following areas: billing practices, advance billing, rate increases, delinquency and disconnection of service, credit for service interruptions, security deposits and the Commission's dispute resolution procedure. Free.

1988 Annual Report

The Commission's Annual Report for FY 1988, reporting major activities over the past year, as well as listing numbers of subscribers and license fee payments. Free.

Massachusetts Cable Systems List

Includes 1988 listing of all towns and cable operators, addresses and phone numbers of local operators and parent corporations and recent subscriber counts. $6.00.

Operators and Their Towns

Includes a list of all cable operators in Massachusetts and municipalities served by each. $2.00.

Directory of Municipal Cable Contacts

Addresses and telephone numbers for over 150 cable advisory committee contacts and more than 250 issuing authority contacts. $6.00.

Cable Communications Policy Act of 1984 (47 U.S.C. 521 *et seq.*) $2.00.

Massachusetts Cable Statute (M.G.L. Chapter 166A) and **Massachusetts Cable Regulations** (207 CMR 2.00-10.00). $10.00.

Consumer Protection Regulations (207 CMR 10.01-10.08)

The Commission's Billing and Termination of Service regulations contain rules affecting several key areas of cable service: late payment, billing due date, disconnection, advance billing, form of bill and dispute resolution timetables. Free.

The Cable Licensing Process in Massachusetts: A Practical Guide for Municipal Officials and Cable Advisory Committees

Published in 1981, this publication provides a comprehensive guide to the initial licensing process for local officials. $6.00

License Renewal Packet

Contains federal renewal statute, legislative history, Commission overview of renewal process and flow chart of the renewal process. $2.00.

Rates Update

The Commission has compiled a list of all cable operator rate increases implemented since federal deregulation took effect in December 1986 and updates this list monthly. Includes old and new rates. $5.00.

The above fees cover partial cost for reproduction. The Commission encourages public access to its documents. Copies of any public documents not included on this list may be obtained at 20 cents per page.

On the Video Cart

Video Materials Available from the Cable TV Commission

In the past year, the Cable TV Commission instituted two information sharing programs related to the annual Community Television Contest. The Commission encourages all community producers and programming directors to take advantage of these programs.

Contest Coverage

Complete video coverage of the 1988 Contest awards ceremony (3/4 inch) is available for any community which wants to show the ceremony on its access or local origination channel. Please contact the Commission if you would like to borrow the tape.

Tape Exchange

The Commission continued its voluntary tape exchange program in the form of a publication listing tapes submitted in the 1988 Contest. Producers gave permission to have their tapes included on the list. The publication includes, by category, the tape title, name, address and telephone number of the producer, and a brief description of the subject matter. Community producers wishing to view and cablecast any tape on the list may contact the producer directly. The Commission will not distribute any tapes. The 1989 Contest entry blanks include an authorization section for producers who want to be included in the 1989 tape exchange program.

Ce
Baby Bells: On t

by William August,
General Counsel
and John D. Patrone,
Assistant General Counsel

Ma Bell's babies are growing up. The regional Bell operating companies or "Baby Bells," the orphans of the court-ordered break-up of AT&T, have spent much of the decade moving into such non-traditional telephone business as computers, electronic yellow pages, data processing and cellular communications. But with the restlessness that comes during adolescence, the Baby Bells are trying to move further into the world of communications by hooking up to your television set. And they have chosen fiber optics, the magic strand that carries vast numbers of audio and video signals over one tiny piece of glass, to get them there.

Currently, telephone companies are restricted from being in the cable television business in three ways. The 1984 Cable Act, which Congress passed to create a separate regulatory system for the growing cable television industry, forbids telephone company ownership of cable systems in all but rural areas, or if it can be shown that cable service would not exist without the telephone company providing it. A Federal Communications Commission rule also forbids most cross-ownership. Finally, in conjunction with the AT&T divestiture, U.S. District Court Judge Harold H. Greene restricted the Baby Bells from generating "information services," including cable television.

However, under outgoing Chairman Dennis R. Patrick, the FCC has begun an inquiry to relax its own cross-ownership ban by granting waivers to telephone companies proposing to build technologically innovative networks including fiber optic networks. Though it is still reviewing comments on the proposal, the FCC has also tentatively voted to ask Congress to lift the ban imposed by federal law. While telephone companies have supported the Commission's proposals, cable operators have strenuously opposed allowing telephone company cross-ownership. State and municipal officials believe that stringent safeguards will be necessary to prevent anti-competitive behavior.

The divergence of opinion has only added to the uncertainty of the inquiry by the FCC, which has operated for more than a year with two vacant commissioners' seats. Like other federal agencies, the FCC now awaits top-level appointments by the Bush Administration, including a new chairman.

On the other hand, the inevitable excitement generated by the advent of a new technology such as fiber optic video networks has created its own momentum. Indeed, some suspect that was precisely the FCC's goal. Even the cable television industry itself approaches fiber with the wide-eyes of a child with a new toy, mostly because of fiber's technical virtues. Fiber's great channel capacity will be able to carry new services such as high definition television (HDTV) and transmit digital data, voice and video over a single wire. Advanced fiber systems may also be switched, creating a "video dial tone" from which callers will be able to dial up the program of their choice. (See related article below.)

The excitement over fiber's technical merits vanishes, however, when the telephone and cable television industries debate the cost of constructing such systems. Many of the same issues Judge Greene faced in the AT&T divestiture also arise in this inquiry, such as how to prevent cross-subsidies and whether telcos should be limited to a traditional common carrier role, or be allowed to transmit **and** produce programming.

The total capital outlay for telephone company fiber networks may exceed $200 billion, according to a recent estimate. In contrast, the total cost of wiring 80% of the

Fiber O
Makes Way fo

by Laura S. Goldman,
Legal Counsel

Click. Click. Welcome to the era of the couch potato. Sooner than you think, you may be virtually glued to your favorite living room chair. Without moving from your seat, you simply pick up the telephone and order a movie, which will be transmitted directly to your television set or VCR. Well, if that doesn't grab you, how about video shopping, home banking or picture phones? Welcome to the wonderful world of fiber optics.

Fiber optics is the use of very thin and pliable tubes of glass or plastic to carry wide bands of frequency. A light source, such as a small laser, at the transmitting end, and a photodiode or detector at the receiving end, allow the transmission of impulses of light through fiber optic cable. Fiber optic cables are much smaller and more light weight than copper cables used by cable operators and telephone companies. Fiber optic cables may be placed in existing cable ducts, thereby allowing cable operators to increase signal capacities without laying new ducts. The use of fiber optic cable will enhance cable television systems by improving signal quality and system reliability.

Fiber optic cable, unlike coaxial cable, offers low loss. When a signal is transmitted through a coaxial cable, it becomes weaker. Cable operators must install broadband amplifiers at regular intervals, usually every 2000 feet of the cable system, to strengthen the signal. The amplifiers add noise and are another source of possible failure in the system. If an amplifier fails, the remaining part of the cable system loses the signal. To obtain a useable signal in a coaxial cable system, cable operators must employ several amplifiers, which limit

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love Into Cable?

nation with coaxial cable was only $13.3 billion. The FCC's staff report on telephone-cable TV cross-ownership notes that existing cable systems could upgrade their networks to include, for example, signal quality close to that of HDTV at a fraction of what it would cost telephone companies. The report also found that except for HDTV, there would be little or no residential demand for new services. The report asked in effect, do we need a more expensive mouse trap?

The risk of high costs would be exacerbated by the FCC's proposal to allow telephone companies to acquire existing cable systems. Competition is fundamental to the media marketplace. Many of those opposed to telco entry, who in theory support competition, argue that telcos would actually wipe out the competition. Takeovers of existing cable systems by telcos would eliminate the competitive market forces that are needed to keep prices down. Anti-takeover rules might also prevent the rate hike pressures which result from the high costs paid for system acquisitions. This approach would also provide a real test of cable's natural monopoly characteristics.

The federal government itself is split on whether telcos should be limited to a common carrier role in cable television markets. The National Telecommunications Information Administration, an arm of the Commerce Department, has proposed a common carrier model in which a fiber system's enhanced channel capacity would be leased in a non-discriminatory manner to multiple users. In this model, the local telephone companies would provide the systems to transport programming — a sort of "video juke box" — but would not produce programming themselves.

The FCC argues that programming revenues are the precise incentive that telcos need to take the plunge into installing fiber to the home. Telco entry into programming, however, would remove the level playing field in the video market. As programmers, telcos would have an incentive to cross-subsidize programming ventures with revenues from their monopoly services, such as local telephone markets.

Even if only carrying programming provided by others, telcos could use revenues from their monopoly telephone service to subsidize these common carrier operations, and thus underprice competing cable systems. Both the FCC and NTIA maintain that elaborate accounting systems can prevent such cross-subsidies. Municipal officials, however, support a structural approach — placing telephone and cable operations in separate subsidiaries. The telephone industry claims that the structural separation of telco and cable would prevent economies of scale, a prime reason for supporting integrated service in the first place. The cable industry argues that regulators simply lack the resources to monitor cross-subsidies. Unless adequate safeguards are put in place, the public may end up subsidizing the advanced video networks through POTS, or "Plain Old Telephone Service."

Greater telephone company participation in video services could result in competition, new services and more technical innovation. The ultimate risk in unlimited telephone entry into video, however, is the possible creation of a media monopoly that would dwarf all competitors. Such concentration of ownership may be "efficient" from a technical or micro-economic perspective, but raises fundamental political and social questions which have not been addressed by the FCC. The FCC should proceed with caution.

Whatever the outcome of the FCC's inquiry, the intense debate created by the telephone companies' campaign to enter the world of cable television has shown how much the Baby Bells remain a powerful force in telecommunications even following divestiture. Ma Bell would be proud.

s: Mass.
e Couch Potato

the system's channel capacity. With fiber optic cable, signals are transmitted as pulses of light that do not require amplification.

By eliminating these long cascades of amplifiers, cable operators will have more useable bandwidth and the potential to deliver both video and data signals. This new wave technology therefore creates an opportunity for both telephone companies and cable operators to provide many more services to consumers.

With fiber optics, cable operators would be able to control programming with software at their central office rather than in the set-top converters. Switching video signals over fiber optic cable might eliminate or reduce theft of service problems. Fiber optics also has lower maintenance costs, which may reduce the number of service outages.

In addition, a single mode fiber may be the best technology for transmitting high definition television. Unlike conventional television, HDTV produces images with picture quality comparable to that viewed in movie theaters. HDTV requires at least 8 megahertz of bandwidth, compared to 6 megahertz needed for conventional television. With more useable bandwidth capacity, fiber optics may pave the way for HDTV.

Telephone companies have been very active in fiber optic development. In New England, NYNEX Corporation is using the Town of Lynnfield as a testing ground for a new narrow band fiber optic ground cable system, limited to the transmission of voice. The system being tested would enable five to six homes to share a single fiber optic cable, which would run underground along the street curbs. Eventually, these homes will be linked to an electronic device that will convert optical signals to electronic

(Continued on page 8)

Commissioner's Corner
(continued from page 3)

This issue of *CableState* also examines the problems communities may face if they do not properly establish access corporations. The article highlights some important steps communities can take to avoid difficult legal problems which may occur if access corporations are structured improperly.

This year the Commission began holding a series of meetings with top officials from Massachusetts cable companies. The meetings have helped the Commission learn more about operators' long term plans for their cable systems. During these meetings, the Commission also had an opportunity to remind operators of their responsibilities under Massachusetts law. As a result of the meetings cable operators have been cooperative and very responsive to Commission concerns. The meetings, which will continue throughout the year and include all of the state's operators, will undoubtedly contribute to main-taining open lines of communications with the cable television industry.

All of the Commission's activities this year have occurred against the backdrop of the state's fiscal problems. Despite having to curtail activities in some areas, the Commission continues to educate the public about cable television and enforce its consumer and licensing regulations. The ever changing technology and financial prospects of the cable industry make this task all the more difficult. The commitment, however, remains. The Commission is fortunate to have a hard-working, dedicated staff who strive to balance the needs of the consumer against the practical problems of cable operators seeking to maintain their businesses.

As we begin to plan for the technical, legal and economic challenges of the nineties, we are well aware that our main goal is to serve the citizens of the Commonwealth. In this regard, the Commission will continue to encourage the state's cable television operators to serve their customer fairly, respectfully and politely. The Commission also urges cable operators to be sensitive to the cost of cable service, which is becoming a greater part of an ever-tightening family budget. In the long run, both cable operators and consumers will benefit from having quality cable service at an affordable price.

Rosalind A. Niles
Commissioner

Regulatory Affairs
(continued from page 4)

to no more than 20% ownership in their service area. Fourth, the Commission forcefully argued for the retention of local franchising, to insure the input of municipal officials and funding for access programming.

Other Actions

Rebate for Wrongful Rate Increases — The Commission notified Nantucket Cablevision that it could not charge mid-year rate increases to customers who had already pre-paid a year of service at an agreed upon rate. As a result, Cablevision rebated over $33,000 to affected subscribers.

License Review Program — In the past year the Commission has reviewed newly issued provisional and final licenses and has directed issuing authorities and cable operators to conform various license provisions to the law.

License Fees for Commercial Subscribers — The Town of Barnstable has requested an advisory opinion on the propriety of Cape Cod Cablevision's failure to pay licensee fees for commercial accounts.

Litigation

Access-to-premises — In January, the Supreme Judicial Court invalidated the state's cable TV access-to-premises statute, ruling that when cable operators exercise a statutory right of access to a building, the landlord is entitled to a jury trial to assess damages or compensation. **Waltham Tele-Communications v. O'Brien,** 403 Mass. 747 (1989).

Rate Freeze Cases — In state court, the City of Boston and the Town of Norwood are arguing that cable license rate freezes are not preempted by federal rate deregulation. While the Town of Danvers recently lost a rate freeze case in federal court, **Nashoba Communications Limited Partnership No. 7 v. Town of Danvers,** 703 F. Supp. 161 (D. Mass. 1988), another Massachusetts federal court has since held that **state** courts, not federal courts, should hear municipal rate freeze contract claims. **City of Boston v. Cablevision Systems Corp.,** CA No. 88-0658-Y (D. Mass. 1989).

Fiber Optics
(continued from page 7)

signals and channel them to the proper residences through existing copper wires. NYNEX expects to have the Lynnfield project completed by the end of this year.

Although much of the development of fiber optic technology has been in the telephone industry, some cable operators have recently installed fiber optic cable in their supertrunk feeding lines. Television signals are received by the cable operator's headend, which is interconnected to various hub sites via fiber optic cable. These signals are then converted to electronic RF signals and transmitted to the homes of subscribers via coaxial cable wire. In Massachusetts, Continental Cablevision, Inc. recently installed fiber optic cable in its supertrunk lines in Springfield and Westfield.

Despite the advantages of fiber optics, one major obstacle is its cost. To wire a home with fiber optic cable would cost cable operators four to five times more than to wire the home with coaxial cable. Cable operators therefore have limited the installation of fiber optic cable to large, geographically diverse areas. Fiber optic cable is also much more expensive than the twisted pair copper cable used by telephone companies. That is why telephone companies argue that they be permitted to transport video signals and not be limited to transmitting computer data and voice signals. (See article on page 6).

The impact of fiber optics on the availability of information and entertainment services to the home is still unknown. But as the technology improves and the cost decreases, it seems likely that more and more telecommunications companies will employ fiber optics. With this versatile technology, only one wire to the home may be necessary. Competition between the telephone companies and cable operators to be that sole service provider to the home has already begun.

And the couch potato eagerly awaits the future. Click. Click.

Massachusetts Community Television Contest 1988 Winners

DOCUMENTARY:
Community Volunteer
Victoria Hull
WOMEN IN WAR: A PORTRAIT
Boston Neighborhood Network

DOCUMENTARY:
Media Professional
Carol Yourman
BUILDING PEACE IN THE MIDST OF WAR
Somerville Community Access TV

EDUCATIONAL/ INSTRUCTIONAL:
Community Volunteer
Brian Adams/Dora Johnson
AIDS: TEENS TAKING CONTROL
Continental Cablevision, Northampton

EDUCATIONAL/ INSTRUCTIONAL:
Media Professional
Lisa McNulty
TEEN BEAT RETROSPECTIVE
Cablevision of Brookline

ENTERTAINMENT/VARIETY:
Community Volunteer
Margaret Noble-Sullivan
MAIN STREET
Canton Cable Access

ENTERTAINMENT/VARIETY:
Media Professional
James Maroney
NORTH SHORE PERSPECTIVES
Continental Cablevision, Beverly

HEALTH: Community Volunteer
John Larkin
ALZHEIMER'S DISEASE:
THE DILEMMA FOR FAMILIES
Continental Cablevision, Arlington

HEALTH: Media Professional
Robert Jean
AT HOME WITH SHIRLEY
UA-Columbia Cablevision, North Attleboro

MUNICIPAL ISSUES:
Community Volunteer
Marcia Kaufman/Jacqueline Ladd
ON TARGET:
BALLOT QUESTION #1
Continental Cablevision, Natick

MUNICIPAL ISSUES:
Media Professional
Rene Kochman/Thom O'Grady
PUBLIC SAFETY THROUGH COOPERATION
Greater Fall River Cable TV

MUSIC: Community Volunteer
Foxboro Music Association
JAZZ FESTIVAL
Foxboro Public Access

MUSIC: Media Professional
Steve Marx
ALIVE AT NIGHTSTAGE
Continental Cablevision, Cambridge

LOCAL NEWS:
Community Volunteer
Bill Heitz
KID'S NEWS
Continental Cablevision, Hamilton

LOCAL NEWS:
Media Professional
Richard Spink
METRO UPDATE:
WEEK IN REVIEW
Continental Cablevision, Brockton

PUBLIC AFFAIRS:
Community Volunteer
Clair Beach/Kate Cloud/ Lori Harms
WHY GI JOE HAS GOT TO GO
Somerville Community Access TV

PUBLIC AFFAIRS:
Media Professional
Maurice Bresnahan/ Audrey Laganas
CTV-3 REPORTS/
LAWRENCE JAIL UPRISING
Continental Cablevision, Lawrence

SPORTS: Community Volunteer
Steve Feldman
EAGLES '87: THE YEAR IN REVIEW
Sharon Community Television

SPORTS: Media Professional
Kate Worster/Sean Kenny
SOX IN WINTER HAVEN
Colonial Cablevision, Revere

PERFORMING ARTS:
Community Volunteer
Beverly Foley
TALES FOR TOTS:
THE TOY SOLDIER
Canton Cable Access

PERFORMING ARTS:
Media Professional
Stephen Roy
BONFIRE
Continental Cablevision, Whitman

PUBLIC SERVICE ANNOUNCEMENT:
Community Volunteer
Libbie Payne
HEALTHWISE: CHOLESTEROL
Continental Cablevision, Quincy

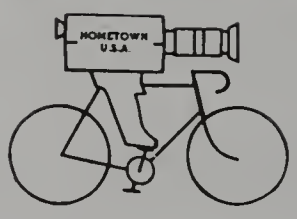
PUBLIC SERVICE ANNOUNCEMENT:
Media Professional
Susan Kimball
DO YOU SPEND YOUR LIFE IN FRONT OF THE TV?
Somerville Community Access TV

ETHNIC CULTURAL:
Community Volunteer
Joel Doutre
TELE KREYOL
Boston Neighborhood Network

ETHNIC CULTURAL:
Media Professional
Lorraine Alexander/ Mark McKertich
HYELITES JUNE, 1988
Continental Cablevision, Watertown

MAEM NEWS:
Medway High School
Government Intern Group
MEDWAY NEWS WATCH

MAEM ENTERTAINMENT:
Lincoln-Sudbury Regional High School
Spanish 4
EL HOMBRE CON EL PELO ORO



1988 Massachusetts Hometown USA Winners

ETHNIC EXPRESSION:
Community Volunteer Single
Joel Sace
MISSING PAGES FROM HISTORY
CCATV, Amherst

LIVE:
Media Professional Series
Ward McCarthy
AFTER THE FACT
Continental Cablevision, Springfield

INSTRUCTIONAL/TRAINING:
Community Volunteer Series
David Sammarco
CABLE CUISINE
American Cablesystems, Arlington

INTERNATIONAL:
Media Professional Single
Skip Tenczar
SOVIET WORKCAMP
Mass. Cablevision, Foxboro

PROGRAMMING FOR SENIOR CITIZENS:
Media Professional Series
Ann Leightheiser
SPECIAL REPORT: THE MAGIC MIX
Continental Cablevision, Springfield

BEST L.O. PROGRAM/ PROMOTION:
Media Professional Series
Ward McCarthy
AFTER THE FACT —
THE ADVENTURE CONTINUES
Continental Cablevision, Springfield

1988 Massachusetts Systems AceWinners

SINGLE PROGRAM, DRAMA/DANCE:
Continental Cablevision, Arlington
GOD IS FEASTING
Catherine Sabatino, Producer

SINGLE PROGRAM, INFORMATIONAL:
Continental Cablevision, Springfield
SPRINGFIELD, MASS.
Sal Martino, Producer

PROGRAM SERIES, INFORMATIONAL:
UA-Columbia Cablevision,
North Attleboro
AT HOME WITH SHIRLEY
Shirley Kervick,
Robert A. Jean, Producers

PROGRAM SERIES, CHILDREN PROGRAMMING:
Cablevision of Brookline
TEEN BEAT
Lisa McNulty, Producer

SINGLE PROGRAM, SPORTS EVENTS COVERAGE:
Continental Cablevision, Brockton
26 MILES TO BOSTON — 1988
Robert F. Burns, Producer

SINGLE OR SERIES COMEDY:
Cablevision of Brookline
THE CABLE COMEDY SHOW
STARRING MIKE McDONALD
Billy G., Producer

Access Advice:
(continued from page 3)

- Insure that the access corporation is accountable to the public. Advertise jobs and solicit bids for contracts to avoid charges of nepotism or favoritism. Before publishing rules, obtain input from users of the facilities. Try to make the studio and equipment available to as many people as possible. Reach out to involve different segments of the community.
- Execute a contract between the access corporation and the cable operator spelling out the details of funding and operation. The access corporation will then have an independent source of authority and the operator will have better understanding of its role regarding the services delivered over the cable system.

The Commission has on file sample by-laws and rules of access corporations which are available to any interested person or groups.

Although the access organization technically may not be a public agency, it holds a public trust. As access corporations become more prevalent, the Commission will therefore continue to increase its oversight role. The Commission invites comments and proposals for rules and guidelines for access corporations which may be helpful to others across the state.

Mass Licensing: Filling in the Map

by Kimberly A. Kyle, Municipal Assistance Coordinator

Initial licensing, which was at its peak in the late 1970s and early 1980s, became hot again in 1988.

Licensing in Massachusetts has been reflected over the years on the Commission's color-coded map. In the early 1980's the eastern part of the state was bustling with cable activity and the map became very colorful. The central and western counties, however, attracted cable operators only in the more populated areas where a handful of clustered colors appeared on the map.

Soon, 330 out of the 351 towns and cities in the Commonwealth will have a place on the map. Smaller, more isolated towns which had little hope of receiving cable television service in the past have suddenly become appealing to cable operators. In 1988, both large and small operators, as well as four companies which had never applied for licenses in Massachusetts before, proposed to serve small towns. Why the change?

In the past, cable television operators shied away from wiring smaller communities because the limited subscriber base could not support the high start up costs. Many rural communities in Massachusetts have clusters of homes in several different areas of a town making a comprehensive cable system more difficult to construct.

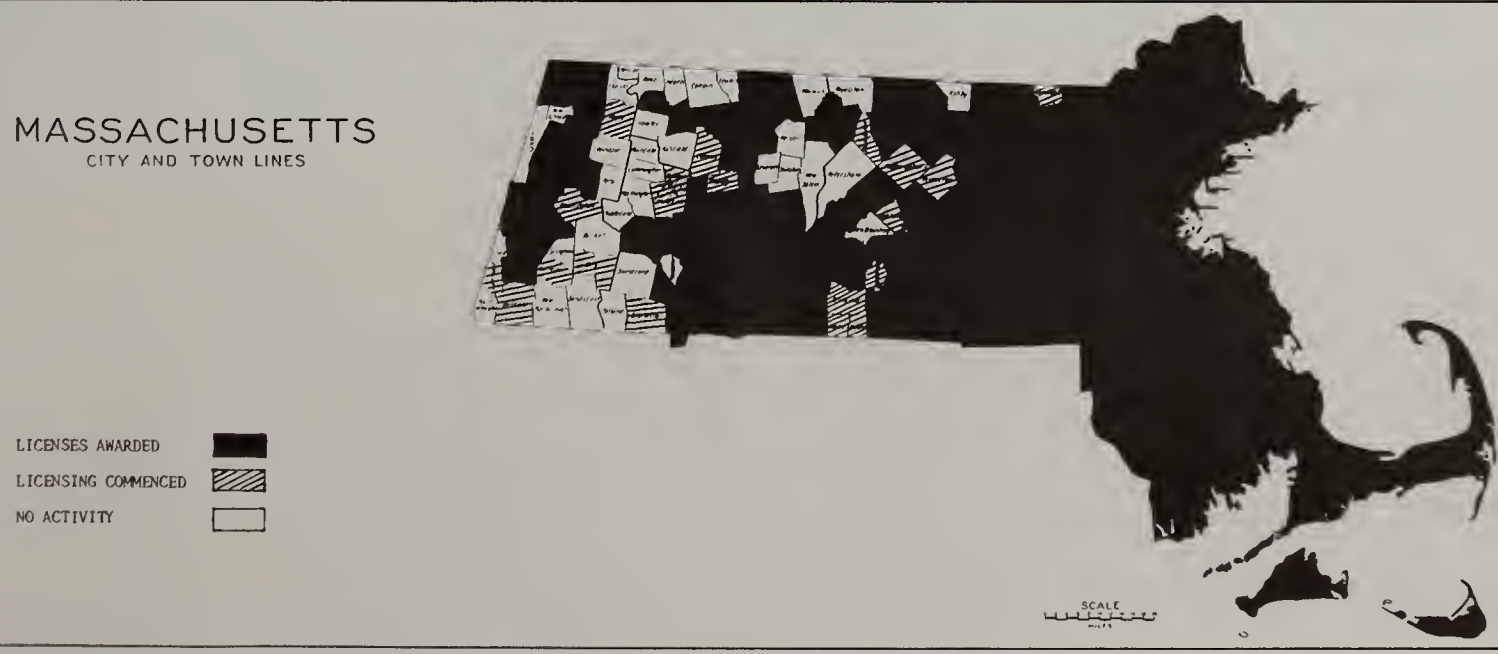
These days, with cable systems selling for well over $2,000 per subscriber, the small-town cable system is potentially a lucrative investment. Reduced construction, equipment and maintenance costs, new housing developments (as families move further away from the urban centers), and of course, consumers willing to pay the price to improve their television reception have also contributed to the re-assessment.

In June 1988, 27 towns in central to western Massachusetts received licensing applications from a New Hampshire cable operator, thereby triggering the licensing process. Before most of these communities held their public hearing, the Commission's Municipal Assistance Coordinator and Executive Director visited the towns in western Massachusetts to present an overview of the initial licensing process and discuss the impact of cable operation in their towns. These meetings attracted many interested citizens, eager to learn how the process works. Will there be interest from other cable companies? How long will licensing take? How do we excite community members to volunteer for a cable advisory committee? How many will actually receive service? What is the going rate for basic cable service?

With help from the Commission, the towns are now getting answers to these questions. Most have prepared the issuing authority report and are now awaiting amended applications. Although it is common for cable advisory committees to investigate what neighboring towns are seeking from a cable operator, towns also focus on their individual needs. For example, one town's issuing authority report consisted of a concise five-page specification list while another town's report was 28 pages and included a detailed public access section, interest in a local office, regional interconnect and a request for the cable operator to describe its marketing plans. While these issuing authority reports vary in length, they include several items of particular concern to the small town: the service area (the number of homes wired per mile), the channel capacity, channel line-up and rates.

Not surprisingly, this interest in cable has prompted at least four other small towns to initiate licensing on their own. It now seems certain that nearly all Massachusetts communities will have access to cable television service by the mid-1990's, thus assuring that more colors will fill the Commission's map.

Municipal officials or citizens interested in learning more about cable television licensing should call Kimberly Kyle at (617) 727-6925.



Rate Regulation Rumblings

(continued from page 1)

chising authorit[ies] should be authorized to regulate basic service rates and related charges such as installation and converter rental fees unless there is direct competition from another cable system or other comparable provider of multichannel service (including access channels, local broadcast stations, and satellite services)."

Under federal law, municipalities currently may regulate rates only in those few communities where the cable operator is not subject to effective competition. The FCC has defined effective competition as the presence of three or more broadcast signals of Grade B contour strength over 100% of the community. Cable operators may also substitute signals which are significantly viewed in the cable community for any or all of the three Grade B signals.

This effective competition standard is quite easy for most cable systems to meet, thus limiting rate deregulation to all but a few remote communities. In Massachusetts, nearly all of the state's cable systems qualify for rate deregulation under the FCC's standard, despite the absence of any head to head competition from another multichannel video programmer in **any** municipality.

Municipal officials have also begun to speak out against rate increases. The Commission receives daily calls from these officials, as well as consumers, asking whether anything can be done about rates. Beyond the 30 day notice provision of 207 CMR 10.02(5), however, little can be done unless Congress revises the Cable Act or the FCC lessens its effective competition standard. But some municipalities have begun to explore other options for controlling rate increases. Indeed, one municipality has recently gone to great length and expense to dispute rate increases by its cable operator.

In **Norwood v. Adams-Russell,** 401 Mass. 677 (1988), the Town of Norwood sued its cable operator, Adams-Russell Co., seeking to enforce a mutually-agreed upon rate freeze provision in the cable license. The Massachusetts Supreme Judicial Court eventually heard the case, ruling that the Town could enforce the rate freeze provision. However, both the Town and Adams-Russell claimed victory after the decision. The Town claimed that the SJC had sanctioned the idea of a time-limited rate freeze. Adams-Russell agreed, but claimed that the court refused to allow the rate freeze beyond December 29, 1986, the day federal rate deregulation went into effect.

The case did not end there, however. The SJC sent the case back to the trial court, which awarded damages to the Town's cable subscribers, but only through the end of 1986. The Town has appealed again to the SJC, continuing to claim that the court's decision allowed the Town and the cable operator to agree to a voluntary, time-limited rate freeze, **despite federal rate deregulation.** In other words, the Town is arguing that it may contract for and enforce a rate freeze provision even though the municipality cannot engage in traditional rate regulation under the Cable Act. The second SJC opinion in the **Norwood** case, which will likely be issued before the end of 1989, may finally settle the question of whether municipalities may legitimately bargain with their cable operators for a voluntary rate freeze.

The outcome of the **Norwood** case is likely to have ramifications beyond Massachusetts, whatever the justices decide. Should the court allow municipalities to negotiate with their cable operators for rate freezes, one can anticipate that many more municipalities will be negotiating for such provisions. Should the court disallow rate freeze provisions, the effect may ultimately be the same: municipalities, stripped of any ability to maintain control over a significant part of cable service, may begin to press Congress to revise or rescind rate regulation.

Short of Congressional action, municipal officials seem likely to keep the pressure on cable operators to be accountable to their customers, especially as they watch the prices continue to rise.

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